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January 5, 1984

Mr. Edwin S. Narus, Sr., Chairman
Board of Auctioneers
737 Coolidge Avenue
Manchester, New Hampshire 03102

Dear Mr. Narus:

This letter is in response to your request for an opinion regarding the Federal Bankruptcy Rule exempting auctioneers who are conducting auctions pursuant to federal bankruptcy liquidation proceedings from state licensure laws. In our opinion, auctioneers conducting an auction pursuant to federal bankruptcy court liquidation proceedings are not required to obtain a state license under RSA 311-B:4.

Federal bankruptcy law requires a trustee in bankruptcy to collect and liquidate the property of a debtor. 11 U.S.C. § 704(1). In addition, federal bankruptcy law authorizes a trustee in bankruptcy to hire auctioneers to assist the trustee:

"Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, ... to represent or assist the trustee in carrying out the trustee's duties under this title."
11 U.S.C. § 327(a) (emphasis added).

The Bankruptcy Rules exempt auctioneers hired by a trustee in bankruptcy from state licensing requirements:

"...No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment." Bankruptcy Rule 6005.



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Federal Bankruptcy Court has exclusive jurisdiction over the property of a bankrupt estate. Isaacs v. Hobbstie & Timber Co., 282 U.S. 734, 737-8 (1931). This jurisdiction specifically includes the power to liquidate the property of the bankrupt. 11 U.S.C. § 704(1). Although the First Circuit has not addressed the issue, the Eighth Circuit has found that authorized action by a trustee in bankruptcy to sell a debtor's assets appears to fall within the power of the bankruptcy court to liquidate the debtor's assets, and therefore the trustee need not obtain a state license for liquidation. State of Mo. v. U.S. Bankruptcy Court for E.D. of Arkansas, 647 F.2d 768 (8th Cir. 1981), cert. denied 454 U.S. 1162.

In addition, RSA 311-B:13, I supports the conclusion that auctions held pursuant to bankruptcy proceedings are exempt from state licensure requirements. Section 13 creates several exceptions to the licensure requirements:

"This chapter shall not apply to any auctions held by order or judgment of any court of the state or the United States... foreclosure sales by mortgagees, lienholders or holders of any other kinds of security interests in real, personal or mixed property or to sales made...by any other person required by law to sell real, personal or mixed property." RSA 311-B:13, I (emphasis added).

While the United States Bankruptcy Court does not specifically order that an auction be held to liquidate an estate, the liquidation and the employment of an auctioneer to assist the trustee in liquidation is authorized by federal law. Additionally, the trustee in bankruptcy is given a lien on all property of the debtor by 7 U.S.C. § 544(a). In effect, the trustee is selling the debtor's property as a "lienholder." Finally, the trustee in bankruptcy is required by 11 U.S.C. § 704(1) to liquidate the property of the debtor. Therefore auctions conducted pursuant to federal bankruptcy liquidation proceedings are exempt from the state licensure requirements of RSA 311-B:4.

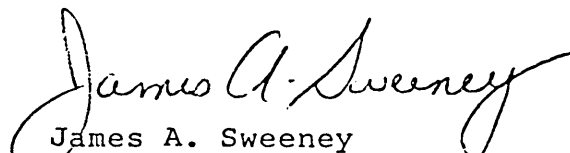
Although it is our opinion that state auctioneer license laws do not apply to auctions conducted pursuant to federal bankruptcy proceedings, proceedings may still be brought against the auctioneer to enforce consumer protection laws.

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Neither the Bankruptcy Rules nor state law exempts auctioneers conducting an auction pursuant to federal bankruptcy liquidation proceedings from state consumer protection laws. Any complaints regarding the violation of consumer protection laws should continue to be forwarded to the Consumer Protection Division.

I trust that this has been responsive to your question. If you have any further questions, please feel free to contact me.

Sincerely yours,


James A. Sweeney
Attorney
Division of Legal Counsel

JAS/smg
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